IN THE MATTER OF TAI CHOI YU

HIGH COURT SINGAPORE
CHAN SEK KEONG JC
[ADMISSION OF ADVOCATES & SOLICITORS NO. 167 OF 1987]
5 DECEMBER 1987

LEGAL PROFESSION: *Application to review decisions of Board of Legal Education - Denial to exempt applicant from passing the Practice Law Course examination - By reason of applicant's experience being limited to practice in Sarawak - Whether the Board had acted unreasonably in exercising its discretion under s. 11(2) of the Legal Profession Act (Cap. 161, 1985 Ed.).*

This was an application pursuant to s. 21 of the Legal Profession Act ("the Act") for review of two 'decisions' of the Board of Legal Education made on 8 November 1986 and on 26 August 1987.

The applicant is a qualified person under the Act who has practised in Sarawak for about 19 years. The applicant who intends to apply to be admitted as an Advocate and Solicitor of the Supreme Court of Singapore wrote to the Board of Legal Education applying for exemption from having to serve the period of pupillage as required under s. 12(2)(a) of the Act.

The Board via a letter dated 8 November 1986 granted an exemption of three months' pupillage under s. 12(4)(c) to the applicant and also informed him that he was required to attend the Practice Law Course to be held in 1987. The applicant came to Singapore and commenced his pupillage in January 1987. He began attending the Practice Law Course in July 1987 and then learnt that all candidates had to take and pass an examination.

The applicant the wrote to the Board of Legal Education seeking its clarification on whether the applicant was only required to attend the said course since there was no mention in the Board's letter dated 8 November 1986 that the applicant was required to pass any examination. At the same time the applicant also sought for an exemption from the Practice Law Course examination under s. 11(2) of the Act should there be a requirement to pass the examination.

The Board in its reply on 26 August 1987 and in exercise of its discretion under s. 11(2) of the Act, denied the exemption and in a letter dated 17 September 1987 gave the grounds of their denial to be that by reason of the applicant's experience (which has been essentially limited to practice in Sarawak) he is not a fit and proper person to be so exempted.

Hence this application that the two decisions of the Board of Legal Education be reviewed. The applicant contended that the Board was bound by its letter which expressly requires him only 'to attend' the Practice Law Course. The applicant also submitted that the Board was wrong in arriving at its decision by concluding that the applicant's practice in Sarawak did not cover many areas of practice in Singapore. No evidence to support this contention was given by the Board and was therefore based on a misunderstanding or ignorance of a relevant fact.

Held:

[1] The Board had applied the very consideration that was prescribed by s. 11(2) of the Legal Profession Act which is the experience of the qualified person. So long as the Board has directed itself properly in law and had taken into account the proper considerations in the exercise of its discretionary power, the Court will not substitute its decision for that of the Board.

[2] The applicant's contention that the Board had made a finding of fact without any evidence that the applicant had no experience in many areas of law in Singapore was misconceived. The onus was on the applicant, being the party seeking an exemption, to furnish to the Board the requisite evidence to persuade the Board to decide in his favour.

[Application dismissed.]

Cases referred to:
Re 56 Denton Road, Twickenham [1953] 1 Ch 51
Robertson v. Minister of Pensions [1949] 1 KB 227
Wells v. Minister of Housing and Local Government [1967] 1 WLR 1000
Lever Finance Ltd. v. Westminster (City) London Borough Council [1971] 1 QB 222
Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223
Padfield v. Minister of Agriculture, Fisheries and Food [1968] AC 997
R. v. Barnet and Camden Rent Tribunal, ex parte Frey Investments Ltd. [1972] 2 QB 342
Breen v. Amalgamated Engineering Union [1971] 2 QB 175
Secretary of State for Education and Science v. Tameside Metropolitan Borough Council [1977] AC 1014
Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust [1937] AC 898
Government of Malaysia v. Loh Wai Kong [1979] 2 MLJ 33
United Hokkien Cemetries, Penang v. The Board, Majlis Perbandaran Pulau Pinang [1979] 2 MLJ 121

Legislation referred to:
Legal Profession Act, [Sing], ss. 11(1), (2), 12(2)(a), (4)(c), 14(2), 21

For the Tai Choi Yu - In person
For the Board of Legal Education - Menon
For the Law Society - Assomull

JUDGMENT

Chan Sek Keong JC:

This was an application pursuant to s. 21 of the Legal Profession Act ("the Act") for review of two "decisions" of the Board of Legal Education made on 8 November 1986 and on 26 August 1987 respectively.

At the conclusion of the hearing on 28 October 1987, I dismissed the application and said that I would gave my reasons in due course. Here are my reasons.

The applicant is a qualified person under the Act, being a barrister-at-law. He has practised in the State of Sarawak for about 19 years. He was called to the Brunei Bar on 14 December 1971 but ceased to renew his practising certificate from Brunei since 12 December 1972. He was also admitted on 6 July 1968 to practise as a barrister of the Supreme Court of Hong Kong on 6 July 1968.

On 4 November 1986, the applicant, after having been informed by the Board by its letter dated 21 July 1986, of the statutory requirements for the admission of the applicant as an advocate and solicitor of the Supreme Court of Singapore, wrote to the Board for exemption from having to serve the period of pupillage required under s. 12(2)(a) of the Act. The Board replied on 8 November 1986 as follows:

> Thank you for your letters of 30 October and 4 November and enclosures.
>
> I write to inform you that the Board of Legal Education has granted approval to Mr Tai Choi Yu, provided he obtains immigration clearance,

(a) to serve his pupillage with Mr. Loh Lin Kok with effect from 2 January 1987;

(b) to take into account the period of pupillage served in chambers prior to his attendance at the Practice Law Course 1987 for computation towards the statutory period of pupillage; and

(c) for exemption of three months' pupillage under s. 12(4)(c) of the Legal Profession Act.

Mr. Tai is required to attend the Practice Law Course to be held in 1987. He should get in touch with the Director of the Course in regard to particulars of the Course...

I should be pleased if you would remit S$25 in payment of registration fee for Mr. Tai.

Shortly after the receipt of this letter, the applicant contacted the Director of the Practice Law Course and was told to revert at a later date nearer to the commencement of the course in July 1987. The applicant came to Singapore and commenced his pupillage with his "master" in January 1987. After he started attending the Practice Law Course in July 1987, he learnt that all candidates had to take and pass the examination to be set at the end of the course. As the Board's letter of 8 November 1986 did not refer to his having to take an examination but merely to attend the course, the applicant wrote to the Board on 13 August 1987 as follows:

We seek your kind clarification to your letter dated 8 November 1986. A photo-copy of the said letter is enclosed for your reference.

Under the said letter out client, Mr. Tai Choi Yu, was required to attend the 1987 Practice Law Course. There was no mention in the said letter that he had to pass the examination conducted by the PLC. We shall be grateful therefore if you confirm our interpretation.

In the event that our interpretation is wrong we humbly apply for the exercise of the Board's discretion to exempt Mr. Tai from the PLC examinations under s. 11(2) of the Legal Profession Act Cap. 161. Thank you.

On 26 August 1987, the Board replied as follows:

I refer to your letter of 13 August 1987.

I regret to inform you that the Board of Legal Education is unable to grant Mr. Tai Choi Yu exemption from the Practice Law Course examinations under s. 11(2) of the Legal Profession Act (Cap. 161).

On 4 September 1987, the applicant wrote to the Board as follows:

Thank you for your letter dated 26 August 1987.

We shall be grateful if you will give us the reasons used by the Board in it judicious exercise of its discretion under s. 11(2) of the Legal Profession Act Cap. 161 in refusing Mr Tai's application for exemption.

We shall be obliged if you will let us have your reply as soon as possible. Kindly send your reply C/O 1, Sophion Road, #28-02, Peace Manion, Singapore 0922.

On 17 September 1987, the Board replied as follows:

I refer to your letter of 4 September 1987.

I have been directed to inform you that the Board is unable to grant Mr. Tai exemption from the Practice Law Course examinations as by reason of his experience (which has been essentially limited to practice in Sarawak) he is not a fit and proper person to be so exempted.

The applicant, being dissatisfied with the Board's replies, applied to the Court for review of the Board's "two decisions" in these terms:

(a) that the interpretation of the conditions specified by the respondent for the petitioner's call to the Singapore Bar contained in their letter dated 8 November 1986 required the petitioner to pass any examination as a condition precedent to the call; and

(b) that the respondent "is unable to grant the petitioner exemption under s. 11(2) of the Legal Profession Act (Cap. 161) by reason of his experience (which has been essentially limited to practice in Sarawak)".

The applicant argued his own case. His submissions were as follows:

A. *Board's letter of 8 November 1986*

The applicant submitted that (i) since the Board's letter expressly required him only "to attend" the Practice Law Course" he was led to believe that he did not have to pass the related examinations. He accepted this as the correct interpretation of the Board's letter and acted on it to his detriment; (ii) he had suffered detriment in that if he had known that he had to pass the said examinations, he would have applied to be admitted as an advocate and solicitor of the High Court of West Malaysia, in which case, although he had to serve 9 months pupillage with a Malayan practitioner in order to become admitted as such, he would or might have been exempted from up to 6 months pupillage on account of his 19 years practice in Sarawak; (iii) in any case, even if he had to do 9 months pupillage, he would have qualified as a Malayan practitioner (as defined in the Act) by September 1987 and in consequence, he would have been entitled, under s. 14(2) of the Act, to be admitted as an advocate and solicitor of the Supreme Court of Singapore without having to serve any period of pupillage or to attend any course of instruction or to pass any examination.

Accordingly, he contended, the Board was bound by its letter which had misled him into believing that he did not have to pass the Practice Law Course.

The applicant referred to the following authorities in support of his argument: (a) *Re 56 Denton Road, Twickenham* [1953] 1 Ch 51; (b) *Robertson v. Minister of Pensions* [1949] 1 KB 227; (c) *Wells v. Minister of Housing and Local Government* [1967] 1 WLR 1000; and (d) *Lever Finance Ltd. v. Westminster (City) London Borough Council* [1971] 1 QB 222.

B. *Board's letter of 27 August 1987*

The applicant submitted that the Board in refusing to grant him an exemption from taking and passing examination on the specific ground of his experience being "essentially limited to practice in Sarawak" was wrong on the following grounds:

(a) the decision was unreasonable in view of the applicant's long, active and continuous practice in Sarawak, which is a "part of Malaysia" and which has a legal system similar to that of Singapore.

(b) the Board adopted the wrong test of experience in refusing the exemption; the proper test was the length of practice as far as the Act "applies to any part of Malaysia or Hong Kong", that is, (as I understood this argument), to Malayan practitioners and Hong Kong practitioners as defined in the Act.

(c) moreover, the Board in its ruling that his practice in Sarawak did not cover many areas of practice in Singapore, had no evidence to support it and was therefore based on a "misunderstanding orignorance of... a relevant fact" (see Scarman LJ in *Secretary of State for Education And Science v. Tameside Metropolitan Borough Council* [1977] AC 1014 at p. 1030).

Applicant referred to the following authorities in support of these arguments: (a) *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223; (b) *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] AC 997; (c) *R. v. Barnet and Camden Rent Tribunal, ex parte Frey Investments Ltd.* [1972] 2 QB 342; (d) *Breen v. Amalgamated Engineering Union* [1971] 2 QB 175; (e) *Secretary of State for Education and Science v. Tameside Metropolitan Borough Council* [1977] AC 1014; (f) *Estate and Trust Agencies (1927) Ltd v. Singapore Improvement Trust* [1973] AC 898; (g) *Government of Malaysia v. Loh Wai Kong* [1979] 2 MlJ 33; (h) *United Hokkien Cemetries, Penang v. The Board, Majlis Perbandaran Pulau Pinang* [1979] 2 MLJ 121.

Counsel on behalf of the Board submitted in regard to the Board's letter of 8 November 1986 that the applicant should have known that the Board had not granted him an exemption from having to pass the Practice Law Course because he had not, in his earlier letters to the Board, applied for such exemption. Counsel further contended even on the applicant's hypothesis that he would have been admitted as an advocate and solicitor of the High Court of West Malaysia by September 1987, he would not have suffered any detriment because the expression "Malayan practitioner" in s. 14(2) of the Act meant a Malayan practitioner who has practised as such in West Malaysia for not less than 3 out of the preceding 4 years prior to the date of his petition. In regard to the Board's letter of 26 August 1987, Counsel submitted that the Board would only grant such exemption in exceptional cases (e.g. those qualified persons who were familiar with the law and practice in Singapore by virtue of their having worked in the Singapore legal service) and that, in respect of the applicant, the Board had taken into account all considerations when it made its decision.

In my view, the applicant's complaint that the "decision" of the Board in their letter of 8 November 1986 had misled him to act to his detriment was wholly misconceived. First of all, it should have been obvious to the applicant that he, having made no application to the Board for exemption from attending the Practice Law Course, had no reason to believe that the Board would make a decision in that respect. Secondly, said letter contained no words which could have given rise to an expectation or could reasonably be construed by an experienced lawyer like the applicant, that the Board had exempted him from passing the Practice Law Course. On the contrary, the letter specifically informed him that he was required to attend the said course. To require the attendance of the said course without the need to pass it would not achieve the purpose of the Board in not exempting him from attending the course. Thirdly, even if the Board had said nothing about the Practice Law Course in their letter, the applicant, unless exempted, would still be required to attend and pass the course, it being a statutory requirement under s. 11(1) of the Act. The Board, in referring to the Practice Law Course, in their said letter was merely trying to be helpful to the applicant. Fourthly, even assuming that it had been reasonable for the applicant to have construed the Board's letter in the manner he alleged he had done, there was no evidence that he ever acted on it by, e.g. withholding or withdrawing any application to become admitted as a Malayan practitioner. It should also be noted that when the applicant wrote to the Board on 13 August 1987 for exemption, he did not inform the Board that he had acted to his detriment.

As s. 14(2) of the Act has no application to the applicant because he is not a Malayan practitioner, it is not strictly necessary for me to consider its meaning. However, since the point has been canvassed before me, and it is a point of some importance to the Board and the Law Society (since Counsel for the latter made a particular effort to support the submission of Counsel for the former), I ought to say something about it.

Section 14 provides:

> (1) A Malayan practitioner who does not qualify under subsection (2) may be admitted as an advocate and solicitor without being required to serve any period of pupillage or to attend any courses of instruction but he shall not be admitted unless he has satisfied the Board in such examinations as may be prescribed by the Board.
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> (2) A Malayan practitioner who has been in active practice in any part of Malaysia for a continuous period of not less than 3 years in the 4 years immediately preceding his petition for admission may be admitted as an advocate and solicitor without being required to serve any period of pupillage or to attend any course of instruction or to pass any examination.

The applicant's contention on the meaning of s. 14(2) of the Act was that if he had qualified as a Malayan practitioner by September 1987, he would come with the terms of s. 14(2) as he had practised for 19 years continuously in a part of Malaysia i.e., Sarawak. Counsel for the Board and for the Law Society contended that that was not the meaning of s. 14(2) and that subsection was intended to apply to a Malayan practitioner who had been in active practice as a Malayan practitioner in West Malaysia for a continuous period of 3 out of the preceding 4 years. I detect an inarticulate premise in the submissions of the Board and the Law Society that for the purpose of that subsection practice of the law in West Malaysia cannot or should not be equated with practice of the law in East Malaysia for the admission of a Malayan practitioner as an advocate and solicitor of the Supreme Court of Singapore. There is no reason why this should be so. A Malayan practitioner who has practised continuously for more than 4 years in e.g. Segamat, Bentong or even Kangar cannot be said to have a greater and wider experience in the areas of law, corresponding to the same areas of law in Singapore, than his East Malaysia counterpart who has practised for an equal number of years in Kuching or Kota Kinabalu. The contrary is probably correct. Yet, Counsel sought to deny the latter of the benefit of s. 14(2) of the Act when the former has been given such benefit. The argument cannot be consistently sustained and must therefore be rejected. In any case, the meaning of s. 14(2) is plain and unambiguous. The definition of "Malayan practitioner" throws no doubt on its plain meaning. A Malayan practitioner is any qualified person **entitled** to practise etc., and not, be it noted, any person who has practised (emphasis added). The expression "any part of Malaysia" in s. 14(2) must be given its ordinary meaning to include Sarawak as a part of Malaysia. In my view, therefore s. 14(2) of the Act must be read to mean that any Malayan practitioner, however briefly he has carried on practice as an advocate and solicitor of the High Court in West Malaysia, is entitled to be admitted as an advocate and solicitor of the Supreme Court of Singapore without having to serve any period of pupillage or attend any course or instruction or pass any examination so long as he satisfies the prescribed period of practice in any part of Malaysia.

I come now to the applicant's compliant that the Board's decision not to exempt him from passing the Practice Law Course was unreasonable because it (a) failed to take into account a relevant matter (i.e. the applicant's long, active and continuous practice especially in a part of Malaysia) and (b) took into account an irrelevant matter (i.e. practice essentially limited to Sarawak). Reference was made to the principles laid down in the *Wednesbury* case where Lord Greene MR said at p. 233:

> The Court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once the question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever come to it.

I was not persuaded that the Board's decision was unreasonable under the *Wednesbury* principle as the Board applied the very consideration that was prescribed by s. 11(2) of the Act which is the experience of the qualified person: see Lord Maugham in *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* [1937] AC 898 at p. 917. Length of practice in the practice of the law is not *per se* experience in the law. This is so for a practitioner who has practised within a single system of law. This is even more so where he has practised in one system of law and relies on it as experience in another system of law. It is true that under s. 14(2) of the Act, the length of practice of the applicant would have been sufficient to exempt him from having serve pupillage or attend any course of instruction or to pass any examination, but that is in consequence of a legislative provision. We are here concerned with the exercise of a discretionary power. So long as the Board has directed itself properly in law and had taken into the proper considerations, a Court will not substitute its decision for that of the Board: see Lord Diplock in *Tameside* at p. 1065

The applicant's next contention that the Board had in effect, without any evidence, made a finding of fact that the applicant had no experience in many areas of law in Singapore was also misconceived. The onus was on the applicant, being the party seeking an exemption, to furnish to the Board requisite evidence to persuade the Board to decide in his favour. It was not for the Board to produce evidence to deny him such an exemption. In the absence of any evidence to the contrary, the Board could have simply rejected the application. But the Board preferred to draw an inference, perfectly justified in my view, that the applicant's experience being essentially limited to practice in Sarawak, could not have touched upon many areas of Singapore law and practice.

It is common knowledge amongst lawyers that the laws of Sarawak and the laws of Singapore are different in many significant areas e.g. in conveyancing, banking and finance, companies and securities regulations, sale and purchase of immovable property, both residential and commercial, all of which are subjects taught in the Practice Law Course. There was no question of the Board having "misunderstood or being ignorant of an established and relevant fact" since the applicant had never established that fact.

By way of a postscript, I should add that the contents of the application reflected a certain degree of confusion on the part of the applicant. As worded, it called for review of (1) the applicant's interpretation of the Board's letter of 8 November 1986 (which could not be a subject matter for review) and (2) the Board's letter of 17 September 1987 (which merely set out the reason for its decision and not the decision itself which was given in its letter of 26 August 1987). On the face of the application, there was nothing for the Court to review. This confusion as to the subject matter for review would probably have accounted for the absence of any specific relief being prayed for in the application and the applicant's failure to ask for any relief at the hearing itself. The nature of the relief sought would be relevant to whether the Court has the power, and if it has, whether it would, grant the relief. For example, if the relief sought were merely a declaration that the decision of the Board made on 26 August 1987 was wrong, such a declaration would not assist the applicant as he would still not have been given an exemption from the Board. In that situation, it would have have been more appropriate for the applicant to make a fresh application, with supporting evidence, to the Board for exemption from passing the Practice Law Course on the ground that he had sufficient experience in or knowledge of areas of law corresponding to areas of law that would be expected of a Singapore practitioner.

Dated this 5 December 1987.

Also found at [1988] 1 CLJ 594